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CLEMENTE FRANCO; HECTOR PENA; PASCUAL
TORRES; CAROL DEUPREE; JESSICA VIRAMONTES;
AND JUAN SARINANA

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION

TODD R. G. HILL,

Plaintiff,

v.

THE BOARD OF DIRECTORS,
OFFICERS AND AGENTS AND
INDIVIDUALS OF THE PEOPLES
COLLEGE OF LAW; et al.

Defendants.

Case No. 2:23-CV-01298-JLS-BFM

**DEFENDANTS' REPLY TO
PLAINTIFF'S OPPOSITION TO
DISMISS PLAINTIFF'S THIRD
AMENDED COMPLAINT**

**COURT WILL TAKE UNDER
SUBMISSION WITHOUT ORAL
ARGUMENT**

Judge Josephine L. Staton
Magistrate Judge Brianna Fuller Mircheff

Defendants THE GUILD LAW SCHOOL DBA PEOPLE'S COLLEGE OF
LAW, JOSHUA GILLENS, WILLIAM MAESTAS, BOARD OF DIRECTORS
FOR THE PEOPLE'S COLLEGE OF LAW, CHRISTINA MARIN GONZALEZ,
ROGER ARAMAYO, ISMAIL VENEGAS,; CLEMENTE FRANCO, HECTOR
PENA, PASCUAL TORRES, CAROL DEUPREE, JESSICA VIRAMONTES,
AND JUAN SARINANA (hereinafter collectively referred to as "Defendants")

1 hereby submit their Reply to Plaintiff's Opposition to Defendants' Motion to
2 Dismiss Plaintiff's Third Amended Complaint.

3 **I. INTRODUCTION**

4 Plaintiff's Opposition to Defendants' Motion to Dismiss Plaintiff's Third
5 Amended Complaint fails to address the deficiencies raised in Defendants' Motion.
6 Instead, Plaintiff demonstrates a misunderstanding of the Federal Rules of Civil
7 Procedure, an inability to comply with the rules and this Court's prior rulings and a
8 barrage of complaints about compliance with Local Rule 7-3. Plaintiff does not
9 rebut Defendants' arguments for dismissal, but rather makes conclusory statements
10 that he has complied with Rule 8 without any explanation or authority. The Court's
11 last order indicated a final opportunity for Plaintiff. Plaintiff has been given five
12 opportunities to file a proper complaint and has failed to do so. The Third Amended
13 Complaint should be dismissed without leave.¹

14 **II. ARGUMENT**

15 **A. Defendants Complied with Local Rule 7-3.**

16 Plaintiff argues that Defendants "filed a premature Motion to Dismiss on
17 September 9, 2024, violating Local Rule 7-3." [Dkt. No. 175, p. 11:10-12.] Without
18 explanation, Plaintiff claims that the premature filing "caused unnecessary delay and
19 expense for Plaintiff, who has been forced to respond to a premature and
20 procedurally defective motion." [*Id.* at p. 11:14-17.] Plaintiff is wrong for several
21 reasons.

22 First, Plaintiff's refusal to confer *telephonically* within the time requested by
23 Defendants is the cause of any delay of speaking telephonically seven days prior to
24 filing the motion. [Kirwin Decl., ¶¶ 4-7, Ex. A; Jamshidi Decl., ¶¶ 2-4, Ex. A.]

25
26 ¹ Plaintiff has sought leave to file an "Amended Third Amended Complaint."
27 Yet again, even this proposed pleading does not cure the defects outlined in
28 Defendants' Motion to Dismiss. These arguments are discussed in detail in
Defendants' Opposition at Docket No. 179.

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1 Plaintiff unreasonably refused to telephonically discuss Defendants' Motion to
2 Dismiss without an outline that was sufficiently detailed to Plaintiff's liking. [*Id.*]
3 This seems to be a continuous tactic employed by Plaintiff as a means to control
4 Defendants and then later blame Defendants for failing to timely comply with Local
5 Rule 7-3. In fact, Plaintiff constantly threatens Defendants with failing to comply
6 with Rule 7-3, or at least his interpretation of the local rule. He then lures these
7 allegations into a threat to file a motion for sanctions against Defendants. This
8 endless barrage of threats (resulting in countless and unnecessary emails) has
9 certainly approached the line of harassment if not fully crossed into it where
10 Plaintiff has sought sanctions against Defendants. Such tactics should be
11 admonished by the Court. See *Bond v. American Med. Ass'n*, 764 F.Supp. 122, 126,
12 fn. 3 (ND IL 1991) (a groundless motion for sanctions is itself sanctionable under
13 Rule 11); *Alliance to End Repression v. Chicago*, 899 F.2d 582, 583 (7th Cir. 1990)
14 ("hair-trigger" sanctions motions are sanctionable); see also *Aetna Life Ins. Co. v.*
15 *Alla Med. Services, Inc.*, 855 F.2d 1470, 1476-1477 (9th Cir. 1988) ("[T]here comes
16 a point when successive motions and papers become so harassing and vexatious that
17 they justify sanctions even if they are not totally frivolous ... [T]he cumulative
18 effect of the Defendants' litigation tactics could indicate the motion was filed for an
19 improper purpose."); *G.C. & K.B. Investments, Inc. v. Wilson*, 326 F.3d 1096, 1110
20 (9th Cir. 2003) ("successive complaints based upon propositions of law previously
21 rejected may constitute harassment under Rule 11"); *Vallejo v. Amgen, Inc.*, 903
22 F.3d 733, 748-749 (8th Cir. 2018) (district court did not abuse its discretion in
23 imposing Rule 11 sanctions on attorney who filed successive motions to relitigate
24 issues previously denied by court).

25 Second, Plaintiff has failed to provide authority that telephonic meet and
26 confer is the only means in complying with Local Rule 7-3. That is because there
27 cases have stated the opposite. In *Gibson Brands, Inc. v. John Hornby Skewes &*
28 *Co.*, Case No. CV 14-00609 DDP, at 1-2 (C.D. Cal. 2015), the Court specifically

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1 stated that a “substantial email exchange could meet these [Local Rule 7-3 meet and
2 confer] requirements.” Defendants and Plaintiff had more than substantial email
3 exchanges regarding Defendants’ Motion to Dismiss that would undoubtedly
4 comply with Local Rule 7-3. These email exchanges occurred seven days prior to
5 filing the motion. [Kirwin Decl., ¶¶ 4-7, Ex. A; Jamshidi Decl., ¶¶ 2-4, Ex. A.]

6 Third, even assuming arguendo that Defendants failed to comply with Local
7 Rule 7, Plaintiff has failed to cite to any prejudice whatsoever. *Carmax Auto*
8 *Superstores California LLC v. Hernandez*, 94 F. Supp. 3d 1078, 1088 (C.D. Cal.
9 2015) (“Failure to comply with the Local Rules does not automatically require the
10 denial of a party's motion, however, particularly where the non-moving party has
11 suffered no apparent prejudice as a result of the failure to comply.”); *Alcom 3PL Inc.*
12 *v. Sun Grp. Partners*, case CV 20-02523-RSWL-11 PVCx (C.D.Cal. Nov. 17, 2022)
13 (where plaintiff was not prejudiced and had ample time to oppose, failure to meet
14 and confer does not require denial of party’s motion); *ECASH Teens., Inc. v.*
15 *Guagliardo*, 35 Fed.Appx. 498, 500 19 (9th Cir. 2002) (“The Central District of
16 California’s local rules do not require dismissal of appellee's motions for failure to
17 satisfy the meet-and-confer requirements.”). In fact, Plaintiff filed his opposition
18 three weeks early. This is likely as a direct result of the extensive meet and confer
19 efforts between Defendants and Plaintiff.

20 **B. Plaintiff’s Third Amended Complaint Does Not Comply with Rule**
21 **8.**

22 Plaintiff claims that his Third Amended Complaint “despite its length, meets
23 [Rule 8’s] standard. It is logically organized, divided into sections describing the
24 parties, providing a factual background, and presenting enumerated legal claims
25 with the legal basis for each. If it in fact contains extraneous information, the TAC
26 is intelligible and clearly delineates the claims and the Defendants against whom the
27
28

1 claims are made.” [Dkt. No. 175, p. 12:4-8.] Plaintiff’s arguments are conclusory
2 and he fails to explain the specific allegations of misconduct against Defendants.²

3 Plaintiff claims that referring to “Defendants” is not fatal to the complaint.
4 Plaintiff provides two citations to support his claim—*Kyle K. v. Chapman*, 208 F.3d
5 940, 944 (11th Cir. 2000), and *Morse v. County of Merced*, No. 116-cv-20 00142-
6 DAD-SKO, 2016 WL 3254034, *6 (ED. Cal. June 13, 2016)—neither of which
7 support his argument. In *Kyle K.*, the Eleventh Circuit determined that “[t]he
8 complaint can be fairly read to aver that all defendants are responsible for the
9 alleged conduct.” *Id.* at 944. The Court also determined that “[i]n this case, plaintiffs
10 have identified the defendants who were personally involved in the care of Kyle and
11 in the alleged acts upon which the alleged constitutional violation is based. The
12 complaint alleges with sufficient particularity facts establishing a causal connection
13 between defendants’ actions and the alleged constitutional violation for purposes of
14 overcoming defendants’ qualified immunity.” *Id.*

15 In *Morse*, the Court determined that “plaintiff has alleged numerous, detailed
16 facts in support of his contention that the individual defendants manipulated
17 witnesses, misrepresented facts to the state court in sworn statements, withheld
18 exculpatory evidence, and ultimately had plaintiff arrested and charged with a
19 murder they knew they lacked any evidence linking him to, while at the same time
20 ignoring key evidence linking others to the murder to other.” *Id.* at *6.

21 The issue here goes far beyond a failure to provide detailed facts in support of
22 Plaintiff’s claims against the individual defendants. Plaintiff fails to provide even
23 define “Defendants” and when he does so, it compounds the confusion as to what
24 claims are against what defendants. As stated in the motion, many of the individual
25

26 ² Plaintiff only provides examples of specific allegations of misconduct for
27 Defendant Ira Spiro, but none for the PCL Defendants. In fact, the vast majority of
28 Plaintiff’s opposition is directed to Defendant Spiro and overwhelming attempts to
address Mr. Spiro’s Motion to Dismiss.

defendants do not appear in any allegation despite the initial paragraphs identifying them. Plaintiff claimed that the individual defendants are included as the Board of Directors. However, this does not provide clarity and is equally unhelpful as Plaintiff did not define “Board of Directors” in the TAC. As such, Defendants are left guessing who is included in these groups.

This problem is compounded by the fact that Plaintiff alleges that “Defendants refers to all named defendant natural persons in their individual capacities and named immediately below the caption of this Third Cause.” [Dkt. No. 148, ¶ 175.] If these individual defendants are being sued in their individual capacities, the individual Defendants can only assume they are not being sued in their capacity as the Board of Directors, Officers or Agents of the Peoples College of Law. Thus, Plaintiff’s claims that the individual Defendants are included as the Board of Directors is nonsensical.

Subsequently, Plaintiff unilaterally concludes that the TAC is efficiently organized, a straightforward statement of the claim, properly incorporates prior paragraphs and does not include lengthy exhibits. However, Plaintiff fails to explain how the nearly 300 paragraphs of intermixed allegations, purported historical facts, speculations, and conclusory assertions about a number of named defendants and with over 100 pages of exhibits complies with FRCP 8.

C. Federal Rule of Civil Procedure 15(a) Does Not Provide Authority to Plaintiff to Amend His Complaint.

Plaintiff relies solely on Federal Rule of Civil Procedure section 15(a) to support his claim that Defendants prematurely filed their Motion to Dismiss as he has already filed an amended Third Amended Complaint. Plaintiff’s reliance on this rule is misplaced.

Under Federal Rule of Civil Procedure 15, a plaintiff may amend the complaint once as a matter of course within “(A) 21 days after serving it, or (B) if the pleading is one to which a responsive pleading is required, 21 days after service

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1 of a responsive pleading or 21 days after service of a motion under Rule 12(b), (e),
2 or (f), whichever is earlier.” Fed.R.Civ.P. 15(a)(1). “In all other cases, a party may
3 amend its pleading only with the opposing party's written consent or the court's
4 leave.” Fed.R.Civ.P. 15(a)(2).

5 Plaintiff indicates that he is amending “as a matter of course.” [Dkt. No. 163.]
6 However, Plaintiff already amended the complaint, not once but four times. The
7 Rule governing amended and supplemental pleadings only allows a party to amend
8 its pleading once as a matter of course, rather than once for each time any opposing
9 party files a responsive pleading or a motion to dismiss. *Wilson v. Ortega*, No. 2:21-
10 cv-0314 KJM AC P, at *1-2 (E.D. Cal. Jan. 20, 2023); see also *Zayas v. Messit*, No.
11 C20-0747-JCC, 2021 WL 3675033, at *2 (W.D. Wash. Aug. 19, 2021) (“Plaintiff
12 exhausted her one-time right to amend as a matter of course when she filed her first
13 amended complaint”); *United States ex rel. D'Agostino v. EV3, Inc.*, 802 F.3d 188,
14 193 (1st Cir. 2015) (the time to amend begins when plaintiff files his complaint, “the
15 word ‘within’ merely specifies the point at which the right expires”). Since Plaintiff
16 has already amended once as a matter of course, he must first obtain Defendants’
17 consent or leave of the court before amending again.

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IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request that the Court grant their Motion to Dismiss in its entirety and not allow Plaintiff leave to amend. Plaintiff has demonstrated that he is unable to correct the deficiencies after five opportunities in this Court, as well as a prior attempt in the State court.

DATED: October 15, 2024

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STATEMENT OF COMPLIANCE WITH LOCAL RULE 11-6.1

“The undersigned party certifies that this brief contains 2359 words, which complies with the word limit of L.R. 11-6.1.

DATED: October 15, 2024

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PROOF OF SERVICE

Hill v. The Board of Directors, Officers, et al.

Case No. 2:23-cv-01298-JLS-CFM

STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

At the time of service, I was over 18 years of age and not a party to this action. I am employed in the County of Orange, State of California. My business address is 402 West Broadway, Suite 1850, San Diego, California 92101.

On October 15, 2024, I served true copies of the following document(s) described as **DEFENDANTS' REPLY TO PLAINTIFF'S OPPOSITION TO DISMISS PLAINTIFF'S THIRD AMENDED COMPLAINT**

on the interested parties in this action as follows:

SEE ATTACHED SERVICE LIST

BY CM/ECF NOTICE OF ELECTRONIC FILING: I electronically filed the document(s) with the Clerk of the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system. Participants in the case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

Executed on October 15, 2024, at San Diego, California.

/s/ Amy Craig

Amy Craig

SERVICE LIST
Hill v. The Board of Directors, Officers, et al.
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